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11 UNITED STATES BANKRUPTCY COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

14 In re
15 Round Table Pizza, Inc.,
16 Debtor.

Case No. 11-41431 RLE
(Jointly Administered with Case Nos.
11-41432 RLE, 11-41433 RLE, and
11-41434 RLE)

Chapter 11

**MOTION TO SELL EQUIPMENT FROM
STORE NO. 101 OUTSIDE ORDINARY
COURSE OF BUSINESS**

[No Hearing Unless Requested]

21
22 Round Table Pizza, Inc., Round Table Development Company, The Round Table
23 Franchise Corporation, and Round Table Pizza Nevada LLC, the jointly administered debtors and
24 debtors-in-possession in the above captioned Chapter 11 reorganization cases (collectively,
25 "Round Table" or the "Debtor"), hereby moves (the "Motion") for the entry of order authorizing
26 the Debtor to sell the equipment from its recently closed location, Store No. 101 outside the
27 ordinary course of business, to Round Table's franchisee, Bay Restaurants Management Group,
28 Inc. ("BRMG").

1 **I. JURISDICTION**

2 This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(a).
3 Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The subject matter of the Motion is a
4 core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O). Authority to approve a sale exists
5 pursuant to 11 U.S.C. § 363.

6 **II. FACTUAL BACKGROUND**

7 **A. Debtor's Background**

8 Round Table's first restaurant opened in Menlo Park, California in 1959. Over the past 50
9 years, Round Table has grown to dominate the Northern California market for pizza to become a
10 major West Coast chain with nearly 500 stores in seven States, and to engage in international
11 franchise development.

12 During the same period, Round Table diversified from acting exclusively as a franchisor to
13 also operating company owned stores, ultimately acquiring and developing 140 company-owned
14 stores and increasing its employee base from 70 to a peak of more than 3,000 employees.

15 During the decade prior to the Great Recession, Round Table enjoyed tremendous growth.
16 Between 1997 and 2006, revenues grew from \$15 million to \$120 million per year, and operating
17 profits grew from \$4.3 million to \$10.5 million. In February of 2007, Round Table obtained a
18 new credit facility. Although Round Table restructured its business to adjust to the Great
19 Recession, the terms of the credit facility could not be met by that restructured business. Efforts to
20 renegotiate the terms of the credit facility were unsuccessful.

21 A fuller presentation of Round Table's background, the circumstances which led to the
22 instant Chapter 11 filing, and Round Table's expectations regarding its reorganization is set forth
23 in the DECLARATION OF J. ROBERT MCCOURT IN SUPPORT OF FIRST DAY MOTIONS filed on
24 February 9, 2011 [Docket No. 13].

25 In connection with Round Table's Employee Stock Option Plan (the "ESOP"), an
26 independent appraiser valued Round Table at \$45 million approximately one year ago. Round
27 Table engaged in marketing efforts immediately prior to the Petition Date, which confirmed a
28 value in that range. General Electric Capital Corporation / Prudential Insurance of America

1 ("GECC / Prudential") are owed \$30 million in the aggregate, suggesting that Round Table should
2 generate a significant recovery to creditors, and potentially a recovery to the ESOP which holds its
3 equity as well.

4 **B. Intended Reorganization**

5 There are two core aspects to Round Table's business: acting as a franchisor to
6 independent third party owner-operators, and operating company-owned stores.

7 There are currently 355 franchised stores, with 148 franchisees. The franchise base is
8 highly diversified: 91% of the franchisees own five stores or less, and only two franchisees own
9 20 to 25 stores. Management believes that the franchise segment of Round Table's business is
10 sound, produces stable profits, and does not require material reorganization.

11 Round Table operates 128 company-owned stores. Although most of them are profitable,
12 a number of the stores have been unable to operate profitably in the current economic
13 environment, generating significant losses. Over the first four to six months of its Chapter 11
14 case, Round Table intends to close unprofitable stores and to renegotiate leases with respect to its
15 marginal stores. Within four to six months, Round Table expects that its remaining base of
16 company-owned stores will be stable and profitable.

17 Round Table expects to have maximized the value of the chain through store closings and
18 lease renegotiations by the conclusion of the initial phase of its reorganization, after which it
19 intends to complete its reorganization.

20 Round Table believes that problems in the economy and the credit industry make it
21 impossible to realize an appropriate value for the company this year. Round Table has therefore
22 proposed a Plan of Reorganization which restructures its debt so that it can operate successfully
23 for a period of perhaps five years, by the conclusion of which it would expect to sell the business
24 or refinance the debt. *See*, SUBMISSION OF INITIAL PLAN OF REORGANIZATION, Docket No. 401.
25 (the "Initial Plan of Reorganization"). Round Table intends to finalize its Plan of Reorganization
26 by early June, at which time it will embark on the Reorganization process. October 1, 2011 is
27 Round Table's target Effective Date. Further information about Round Table's intended
28 reorganization is presented in the Explanatory Statement accompanying its Initial Plan of

1 Reorganization, Docket No. 401.

2 **C. Equipment Debtor Seeks to Sell**

3 Since the filing of its voluntary Chapter 11 petitions on February 9, 2011, Round Table has
4 closed 21 of its company-owned stores and surrendered the premises to the landlords. Among
5 these locations was Store No. 101, located in Albany, California. Round Table's franchisee,
6 BRMG desires to re-open the store and purchase Store No. 101's furniture, fixtures, equipment,
7 leasehold improvements, and the location's goodwill (the "Assets to be Sold") for \$40,000. As the
8 seller, Round Table will be subject to a \$500 escrow fee, leaving a net amount of \$39,500 for the
9 estate. A list of the equipment as part of the Assets to be Sold to BRMG is attached hereto as
10 **Exhibit A** (the "Equipment"). In addition to the sale proceeds, the transaction will result in a new
11 franchised location that will bring additional income to the estate in the form of franchise
12 royalties.

13 On average, the value of each store's equipment ranges from about \$15,000 to \$35,000 and
14 factors that affect the value include age, condition, and whether or not the equipment is sold as a
15 package. To remove and transport a store's equipment from a closed location on average about
16 \$5,000. If Round Table is unable to sell the Assets to be Sold to BRMG, then it would expect
17 incur costs in removing and transporting the Equipment from Store No. 101 and at best may
18 receive \$30,000 in net proceeds from the sale of the Equipment.

19
20 **III. RELIEF REQUESTED**

21 Through this Motion, Round Table seeks authority to sell the Assets to be Sold outside the
22 ordinary course of business to BRMG in the amount of \$40,000.00.

23
24 **IV. LEGAL AUTHORITY**

25 Section 363(b) of the Bankruptcy Code empowers a debtor-in-possession to "sell . . .
26 other than in the ordinary course of business, property of the estate." See 11 U.S.C. § 363(b). In
27 addition, courts that have addressed the issue of a sale of all assets outside the ordinary course of
28 business generally apply standards for court approval of such a sale. Most courts require a

1 “business justification” for the transaction. In re Equity Funding Corp. of America, 492 F.2d 793
2 (9th Cir.), *cert. denied*, 419 U.S. 964 (1974) (sale of assets approved for “cause shown”); Walter
3 v. Sunwest Bank (In re Walter), 83 B.R. 14, 19 (9th Cir. B.A.P. 1988) (there must be some
4 articulated business justification for using, selling or leasing the property outside of the ordinary
5 course of business).

6 “Bankruptcy court should have wide latitude in approving even private sale of all or
7 substantially all of the estate assets not in ordinary course of business under [11 U.S.C.] § 363(b).
8 However, each such proposed sale must be examined from its own facts to determine whether
9 approval is justified.” In re Ancor Exploration Co., 30 B.R. 802, 808 (N.D. Okla. 1983).

10 There is a sound business justification for the proposed sale. The purchase price is
11 \$40,000, which is materially in excess of the otherwise realizable value of the equipment. This
12 sale will benefit the estate in bringing a higher than average sale price for the equipment, saving
13 Round Table the cost of removing the equipment, and adding a new franchised location. Since the
14 equipment is being sold in place and at a premium over market values, it is not likely that
15 competitive bidding could be obtained. For the foregoing reasons, the sale of the Assets to be
16 Sold to BRMG is in the best interests of the estate and its creditors.

17 18 **V. CONCLUSION**

19 WHEREFORE, Round Table respectfully requests the Court for an order approving the
20 sale of the Assets to be Sold outside the ordinary course of business to BRMG in the amount of
21 \$40,000.00 and any further relief the Court deems appropriate under the circumstances.

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23 DATED: May 13, 2011

McNUTT LAW GROUP LLP

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25 By: /s/ Marianne M. Dickson
26 Marianne M. Dickson
27 Attorneys for Debtor
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